Notice of Allowability	Application No. 10/068,167	Applicant(s) PEABODY ET AL.	
	Examiner Charles A. Marmor, II	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to *the Telephone Interview of 26 September 2005*.

2. ☒ The allowed claim(s) is/are *1,3-10,12-18 and 34-38*.

3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a) ☐ All b) ☐ Some* c) ☐ None of the:
      1. ☐ Certified copies of the priority documents have been received.
      2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
      3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

   * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
   (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
   (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

   Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date *09262005* .
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

Charles A. Marmor, II
Primary Examiner
Art Unit: 3736

EXAMINER'S AMENDMENT

1. This Office Action is responsive to the Telephonic Interview of September 26, 2005 after the Final Rejection of August 9, 2005.

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with James K. Folker on September 26, 2005.

3. The application has been amended as follows:

a. Claim 10 has been amended as follows:

10. (Currently Amended) A measuring guide for noninvasive measurement of bone tissue during an orthopedic procedure, comprising:

a noninvasive marking guide;

a ruler coupled to the marking guide, the ruler defining a ~~longitudinal axis;~~ longitudinal axis and a transverse axis;

a noninvasive stop plate coupled to the ruler, the noninvasive stop plate being pivotable, with respect to ~~a pivot point on~~ the transverse axis of the ruler, to facilitate transverse placement, with respect to the ruler, of an abutment surface of the stop plate against an end surface of a bone, wherein the abutment surface is generally symmetric with respect to both sides of the longitudinal axis defined by the ruler; and

a locking mechanism that permits selective adjustment of the distance between the noninvasive marking guide and the noninvasive stop plate,

wherein the ruler indicates the distance between the noninvasive marking guide and the noninvasive stop plate.

b. In claim 17, line 2, "about" has been changed to --abut--.

c. Claim 18 has been amended as follows:

18. (Currently Amended) ~~The measuring guide as recited in claim 10,~~ A measuring guide for noninvasive measurement of bone tissue during an orthopedic procedure, comprising:

a noninvasive marking guide;

a ruler coupled to the marking guide, the ruler defining a longitudinal axis;

a noninvasive stop plate coupled to the ruler, the noninvasive stop plate being pivotable, with respect to a pivot point on the ruler, to facilitate transverse placement, with respect to the ruler, of an abutment surface of the stop plate against an end surface of a bone, wherein the abutment surface is generally symmetric with respect to both sides of the longitudinal axis defined by the ruler; and

a locking mechanism that permits selective adjustment of the distance between the noninvasive marking guide and the noninvasive stop plate,

wherein the ruler indicates the distance between the noninvasive marking guide and the noninvasive stop plate;

wherein the noninvasive stop plate is selectively lockable at angles of approximately 84°, 90° and 96° relative to the ruler.

d. Claim 30 has been canceled.

e. Claims 32 and 33 have been canceled.

4. The following is an examiner's statement of reasons for allowance:

Regarding claims 1, 3-9, 34, 36 and 37, no prior art of record teach or fairly suggest a measuring guide for assisting in locating a prosthetic device, as claimed by Applicant, where a noninvasive stop plate including an abutment surface is configured to abut a bone, where the stop plate is pivotably coupled to a locking mechanism to permit positioning of the stop plate at desired angles with respect to the ruler and where the abutment surface is positioned on both sides of the ruler.

Regarding claims 10, 16, 17, 35 and 38, no prior art of record teach or fairly suggest a measuring guide for noninvasive measurement of bone tissue during an orthopedic procedure, as claimed by Applicant, where a noninvasive stop plate including an abutment surface is configured to abut an end of a bone such that the abutment surface is transverse to the ruler, where the noninvasive stop plate is coupled to the ruler such that the noninvasive stop plate pivots with respect to a transverse axis of the ruler, where a locking mechanism permits selective adjustment of the distance between the noninvasive stop plate and a noninvasive marking guide, and where the abutment surface is generally symmetric with respect to both sides of the longitudinal axis defined by the ruler.

Regarding claims 12-15, no prior art of record teach or fairly suggest a measuring guide for noninvasive measurement of bone tissue, as claimed by Applicant, where the locking mechanism includes a block with an opening for slidably receiving the ruler and a spring-loaded release mechanism biased toward engagement with the ruler to lock the position of the ruler with respect to the lock.

Regarding claim 18, no prior art of record teach or fairly suggest a measuring guide for noninvasive measurement of bone tissue during an orthopedic procedure, as claimed by Applicant, where a noninvasive stop plate including an abutment surface is configured to abut an end of a bone such that the abutment surface is transverse to the ruler, where the noninvasive stop plate is coupled to the ruler such that the noninvasive stop plate pivots with respect to a pivot point on the ruler, where a locking mechanism permits selective adjustment of the distance between the noninvasive stop plate and a noninvasive marking guide, where the abutment surface is generally symmetric with respect to both sides of the longitudinal axis defined by the ruler, and where the noninvasive stop plate is selectively lockable at angles of approximately 84°, 90° and 96° relative to the ruler.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Marmor, II whose telephone number is (571) 272-4730. The examiner can normally be reached on M-TH (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Charles A. Marmor, II
Primary Examiner
Art Unit 3736

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September 27, 2005